

REMARKS/ARGUMENTS

Claims 8-15, 17, 18, and 20-27 are active. Claim 8 has been revised to refer to isolated algal protein or peptide hydrolysates from red, green or brown algae which exclude microalgae like *Chlorella* and *Spirulina*. Support for this amendment is found at least in the paragraph bridging pages 3-4 of the specification. New claims 25-27 track claim 8, but omits the functional limitation regarding superior shine and moistness and refer to the isolated algal proteins and peptide hydrolysates disclosed on page 4 of the specification. The Applicants do not believe that any new matter has been added.

The Applicants thank Examiner Vakili for withdrawing the anticipation and double patenting rejections and respectfully request that the remaining obviousness rejection be withdrawn in view of the following remarks.

Rejection—35 U.S.C. §103

Claims 8-24 were rejected under 35 U.S.C. 103(a) as being unpatentable over Albitskaya et al., RU 2,044,770 (abstract only), in view of Briand, U.S. Patent No. 5,508,033, and further in view of Zulli, et al., U.S. 2002/0160064.

Albitskaya is directed to a *Chlorella* extract and does not disclose or suggest a composition containing an algae extract from non-*Chlorella* algae. Moreover, while this document describes an extraction procedure for *Chlorella* (a microalgae), it would have not provided a reasonable expectation of success for extracting proteins from red, green or brown algae due to the significant structural and taxonomic differences between microalgae such as *Chlorella* and red, green and brown algae. The present claims exclude extracts from microalgae.

Briand discloses extraction of non-*Chlorella* algae such as *Fucus vesiculosus* (Example 1) and *Ascophyllum nodosum* (Example 2). It indicates that brown algae contain “the highest anti-radical activity” (col. 1, lines 42-43). However, this document does not provide a reasonable expectation of success for the superior cosmetic properties of the algal protein and peptide extracts of the invention, such as their ability to enhance hair and skin shine and moistness. In fact, Briand merely refers to their anti-radical activity and provides no suggestion of the superior cosmetic properties of the claimed protein and peptide extracts.

Even where similar properties deemed to be inherent to the extracts of Briand, the Briand extracts are materially different from the isolated protein and peptide extracts of the invention. For example, Briand extracts *Fucus vesiculosus* by grinding and 24 hr extraction in water (Example 1) followed by filtration and drying. Those of ordinary skill in the art would recognize that the Briand extracts would lack other components extracted under the conditions specified in the claims (see e.g., the protease digestion step in claim 20).

Zulli, et al., discloses “Cosmetics containing at least one isoflavone aglycone” that may be “combined with algal extract” as an optional secondary ingredient (Abstract, claims 3-4).

Paragraph [0021] indicates “Algal extracts are used as radical inhibitors in anti-aging cosmetics”. Like Briand, Zulli does not provide a reasonable expectation of success for the superior functional properties of the protein and peptide extracts of the claims, such as their ability to produce superior shine and moistness. Zulli, rather, is concerned with the use of algal extracts having anti-radical activity. Zulli also does not disclose or suggest the extracts of the invention. For example, Zulli [0021] is, in particular, directed to the “blue-green microalga of the genus *Spirulina*”. These are excluded from the present claims and as noted above have materially different structural and taxonomic features than the red, green and brown algae of the present claims. Moreover, Zulli [0021] does not disclose or suggest use of

isolated proteins or peptide hydrolysates from red, blue or brown algae as required by the invention.

Thus, the cited prior art does not suggest the extraction of isolated red, green or brown algae proteins, or protein hydrolysates, which have superior functional properties, nor does it provide a reasonable expectation of success for a composition having these properties.

Accordingly, this rejection should now be withdrawn.

CONCLUSION

In view of the above amendments and remarks, the Applicant respectfully submit that this application is now in condition for allowance. An early notification of such allowance is earnestly requested.

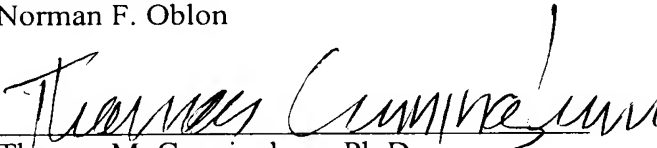
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